IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1289

NATIONAL RAILROAD PASSENGER CORPORATION, *et al.*,

Petitioners,

v.

NATIONAL ASSOCIATION OF RAILROAD PASSENGERS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL ASSOCIATION OF RAILROAD PASSENGERS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is not yet reported. The order of the district court (Pet.

App. 39a) is unreported and was rendered without opinion.[1]

JURISDICTION

The judgment of the court of appeals was entered on January 5, 1973 (Pet. App. 36a-37a), and the petition for a writ of certiorari was filed March 21, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether injured and aggrieved parties may maintain actions to enjoin violations of the Amtrak Act, or whether Section 307 of the Act, 45 U.S.C. 547, bars suits by all parties other than the Attorney General of the United States, employees and employee representatives.

STATEMENT

This litigation involves an attempt by National Railroad Passenger Corporation ("Amtrak"), joined by the Southern Railway Company ("Southern") and its 99-percent subsidiary, Central of Georgia Railway Company ("Central"), to immunize themselves from injunctive actions for threatened violations of the Amtrak statute.

The action was instituted in the district court by National Association of Railroad Passengers, respondent here, to restrain the discontinuance of Central's trains on the ground, inter alia, that Central was a part of Southern

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[1] The case below was consolidated with the appeal in *Potomac Passengers Association v. Chesapeake & Ohio Railway Co., et al.*, opinion of the district court sub nom. *Congress of Railway Unions v. Hodgson*, 326 F. Supp. 68 (D.C. D.C. 1971).

within the meaning of section 401(a)(1) of the Amtrak Act, 45 U.S.C. 561(a)(1). That section requires that a railroad must contract with Amtrak for its entire responsibility for the provision of intercity rail passenger service, in order to discontinue any passenger trains. Central contracted with Amtrak, but Southern did not contract with Amtrak.

The district court dismissed the action for lack of standing to sue. The court of appeals reversed. The court of appeals held, in a comprehensive and thorough opinion, that injured persons may maintain actions for injunctive relief. Section 307 of the Amtrak Statute does not bar such actions. The court based its opinion not only upon a three-part standard governing "standing to sue", but also under the doctrines of "jurisdiction", "reviewability", and "private causes of action".

The case below was consolidated with *Potomac Passengers Assn v. Chesapeake & Ohio Ry. Co., et al.*, supra at fn. 1, which involved the question whether a federal district court has jurisdiction to determine whether a specific train provides "intercity rail passenger service" or "commuter and other short-haul service" within the meaning of the Amtrak Act. The court held that section 307 of the Amtrak statute is not in issue because this question is not whether the Amtrak law has been violated. Jurisdiction of the district court was sustained under the commerce power and the Declaratory Judgment Act, 28 U.S.C. 1337, 2201. That ruling is not challenged here.

ARGUMENT

The decision below is correct and no issue warranting plenary review is presented. We find it difficult to improve upon the exhaustive opinion of the court below.

1. The court of appeals correctly found an absence of any Congressional purpose or intent to curtail conventional judicial remedies, or to lodge injunctive relief *only* in the hands of the Attorney General and railway labor. Another court, in another circuit, has reached the same conclusion. *Wood v. National Railroad Passenger Corp.*, 341 F. Supp. 908 (D. Conn. 1972). Moreover, contrary to petitioners' contention, the construction of section 307 of the Amtrak statute is not even a threshold question in any important case;[2] and there is nothing inconsistent in *Quincy College & Sem. Corp. v. Burlington Northern, Inc.*, 328 F. Supp. 808 (N.D. Ill. 1971), aff'd 405 U.S. 906 (1972).[3] Petitioners are grasping at straws in their attempt to find a conflict of authority sufficient to warrant plenary review by this Court.

The notion that Congress was aware that enactment of the Amtrak law statute would result in the discontinuance of many trains, lends no support to a view that section 307 was intended to preclude judicial action to enjoin unlawful train discontinuances. Congressional concern for lawful train discontinuances, also extends to the prevention of unlawful train discontinuances.

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[2] The five other cases cited (Pet. pp. 9-10, fn. 24) are comprised of two minor and virtually inactive cases in the Northern and Southern Districts of New York; two companion cases, involving identical trains in the Eastern District of Pennsylvania, which deal solely with the "intercity" versus "commuter" question, reported at 338 I.C.C. 621 and 338 I.C.C. 690; and one case in the Northern District of Illinois, dealing solely with the "intercity" versus "commuter" question.

[3] Reference to the decision of a single judge in *Miltenberger v. Chesapeake & Ohio Railway Co.*, 450 F.2d 971, 974-5 (4th Cir. 1971), is wholly misplaced. The decision below acknowledges 45 U.S.C. 541. (Pet. App. pp. 5a-6a, 7a-8a)

2. The statutory language does not preclude suits by persons other than the Attorney General or railway labor. Petitioners point to the so-called title of Section 307 as, "Jurisdiction of the district courts of the United States to Impose Sanctions", and suggest that such a specific jurisdictional grant . . . must supersede the general jurisdictional grant of 28 U.S.C. 1337." (Pet. p. 2, 17) However, the cited title was given by the West Publishing Company, rather than by the Congress. The title of Section 307, as enacted by the Congress, only reads "Sanctions". 84 Stat. 1333. 1970 U.S. Code Cong. & Adm. News 1552. Moreover, as the court below observed, Congress intended that railroad passengers would have a right of action (Pet. App. pp. 26a-27a):

> "When Congress seeks to protect a group such as railroad passengers, we may reasonably imply, absent express and definite indications to the contrary, that Congress intended this group to have judicial relief to achieve the protection Congress intended. *See J.I. Case Co. v. Borak*, 377 U.S. 426, 431-32 (1964). It is argued that the principal should not apply because railroad passengers are merely indirect beneficiaries of the Amtrak Act. We most heartily disagree. As indicated earlier, the congressional statement of purpose makes clear that the main function of the Amtrak Act was to preserve and improve train service. The object of the legislation was not just trains, but the people who ride them."

3. Petitioners fears that a "wave of injunctive actions" would "cripple", "emasculate", and "threaten substantial if not fatal interference" with Amtrak's program, are baseless. (Pet. pp. 7a-10a) Amtrak has nothing to fear if it stays within the law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

GORDON P. MacDOUGALL
705 Ring Building
1200 18th Street, N.W.
Washington, D.C. 20036

Attorney for Respondent,
National Association of
Railroad Passengers

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